No. 16461

In the United States Court of Appeals for the Ninth Circuit

UNITED STATES OF AMERICA, APPELLANT

v.

ARTHUR E. BAKER, DORIS M. BAKER, JOHN L. ROACH and BETTIE JO ROACH, APPELLEES

Appeal From the United States District Court for the District of Arizona

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BRIEF FOR THE UNITED STATES, APPELLANT

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INDEX

CITATIONS

Cases:

Cases—Continued

Statutes:

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OPINION BELOW

The district court did not write an opinion. The final judgment is printed at R. 27.

JURISDICTION

This is an appeal from a final judgment of the district court in a condemnation proceeding entered on January 2, 1959. Notice of appeal was filed on February 10, 1959. The jurisdiction of the district court was invoked by the United States in these condemnation proceedings under 28 U.S.C. sec. 1358.

The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1291.

QUESTIONS PRESENTED

1. Whether the court erred in refusing to instruct the jury that comparable sales are the best evidence of market value.

2. Whether the court erred in refusing to instruct the jury that the use to which the Government devoted the land after the taking should be removed from their consideration of market value.

STATEMENT

This action is for the taking, under the power of eminent domain, and for the ascertainment and award of just compensation to the owners and parties in interest, of a single tract of land consisting of approximately 132.4 acres.[1] The complaint was filed on March 11, 1957, together with a declaration of taking and a deposit of estimated just compensation (R. 3-10). The land taken was formerly part of a 513-acre truck and cotton farm lying approximately midway on the road joining Luke Air Force Base with Phoenix, Arizona, about 15 miles distant. The parcel was taken for the purpose of construcing housing for personnel assigned to the air base. Sec. 505 of the Act of September 28, 1951, 65 Stat. 336, 365. Trial was begun on November 19, 1958, on the issue of compensation, and concluded with the jury

[1] The determination of just compensation of the other tract described in the complaint was separately tried and is not involved on this appeal.

returning a verdict of $165,500 on November 25, 1958 (R. 25). The testimony can be briefly summarized as follows:

Mr. J. Leslie Hansen, a professional real estate appraiser, testified for the Government that the highest and best use of the land was for farming purposes, with some speculative value along the highway, and not residential for the reason that a housing development one-half mile from the instant land was having serious selling difficulties (R. 50, 51-54). The witness testified that the Military Housing, Wherry and Capehart projects [2] played a significant part in his consideration of the highest and best use of the land because, "Those acts were on the books for the purpose of providing housing to the bases" where, "because of the lack of soundness of investment to the private builder, there has been little or no private building of housing in the vicinity of the military bases" (R. 86). Permanency of the military facility is immaterial, "inasmuch as it is created by an act of Congress, an act of Congress can deactivate it" (R. 87). Therefore, the witness continued, since the instant situation is one where Capehart housing was required to fill the need, it follows that private investment had not been available (R. 87). He valued the

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[2] "Wherry Projects" were undertaken by private interests with the aid of Government assistance in financing, etc. See *Offutt Housing Co.* v. *Sarpy County*, 351 U.S. 253 (1956). "Capehart" housing is the more recent form of military housing which will be operated by the Government after private builders have completed construction.

land on the basis of comparable sales (R. 50, 55-56) at an average of $700 per acre for a total of $92,680.

Mr. Vern A. Englehorn, engaged in farm management, appraisals and operations, testified for the Government that the highest and best use was for farming purposes with some investment value for future population expansion (R. 162). Mr. Englehorn added that no one had indicated any interest in subdivision activity in the area (R. 166). On the basis of comparable sales, in his opinion, the land had a market value of $93,000 including severance damages (R. 160-162, 165).

Mr. R. R. McGrew, a land planning consultant, testified for the former owners that for various reasons the highest and best use for the land taken was for commercial and residential development (R. 44). Louis J. Combs, Captain, USAF, Information Officer at Luke AFB, testified for the owners that there was a need for off-base housing for personnel stationed at Luke (R. 48), and that the instant project would "alleviate" the housing problem (R. 48-49).

Mr. Bert Cavanagh, a professional real estate appraiser, testified for the former owners that, because the land was close to the source of sales—Luke AFB—and because the land itself was adaptable, the highest and best use for the land was for a housing development, multiple dwelling-unit development and a commercial shopping center (R. 100-101). Mr. Cavanagh further stated that the change to a permanent status of Luke AFB had the effect of giving stability to a base which might otherwise have been withdrawn and thereby eliminate the need for hous-

ing. The change to permanent status obligates the Government "to take and provide some adequate housing which was not necessary before" (R. 105). Expressly stating that there were no sales available which he considered comparable in arriving at his estimate of market value, Mr. Cavanagh testified on the basis of his experience that in his opinion the land was worth $269,280, or an average of $2,000 per acre (R. 103, 106). Assuming the highest and best use to be agricultural, he valued the land taken at $145,-200, plus severance damages to the remainder of $139,200 (R. 119-120).

Mr. Robert L. Blake, a professional appraiser and valuation engineer, testified for the owners that the highest and best use for the property was for residential, multiple housing and commercial development (R. 127). He stated that the population trend in recent years had been in the general direction of the instant land from Phoenix (R. 121-122). While stating that there was a demand for housing at the time of taking, Mr. Blake also declared that under the Wherry and Capehart housing programs, the Government would supply that need where private capital was not forthcoming (R. 127-128). Although he stated he found no comparable sales in the area, he did state he used unspecified "similar sales of similar land" in arriving at a valuation of $232,300 for the land taken (R. 123, 129, 135).

Mr. Herbert V. Atha, in the business of making farm loans, testified for the owners that the land, in his opinion and on the basis of his general familiarity with farm values, had a fair market value for farm-

ing purposes of $218,300, including severance damages to the remainder (R. 144, 148). Mr. Arthur E. Baker, an owner, testified that in his opinion, conceding that "it might be a little bit biased", the market value of the land taken was $293,400 ($3,500 per acre for 32 acres, and $1,800 for the remaining 100 acres), considering its highest and best use to be for commercial and residential development (R. 155-156). Mr. Baker also testified that he had purchased the land in 1953 for $355 per acre (Original Transcript, pp. 272, 273-274).

In summary, then, two fundamental issues appear. The Government's witnesses testified that the highest and best use of the land was for farming purposes. This was in direct conflict with the testimony of the owners' witnesses in whose opinion the highest and best use was for commercial and housing development. The use, or nonuse, of comparable sales in arriving at estimates of market value was the second fundamental point of contention; for the Government's experts relied heavily on such sales as a basis for their estimates, while the owners' witnesses relied almost entirely on their general familiarity with the area. The testimony relative to comparable sales is detailed as follows:

Mr. Hanson, testifying for the Government, said that he took into consideration all the sales that had occurred in the area associated in time with the date of taking. One sale to which he attempted to testify was excluded by the court because the date of sale, 1953, was too remote in time (R. 49). Some of the sales he considered were in the area east of the sub-

ject property. He testified that he "looked at them all, and took into consideration what they were, the types of farm, and the type of operation, the water conditions so far as the subject sales of the comparable sales is concerned, * * * " (R. 50). The witness also considered some 15 sales 8 to 10 miles away in the Adaman Irrigation District and compared the instant property with its water with that of the Adaman farms which had practically an unlimited amount of water superior to the instant land, in an area that had been "sought after by, and invaded by the vegetable growers" (R. 50, 55-56, 57). The witness stated that the Adaman farmland was selling for approximately $600 an acre; and based upon these considerations, then valued the instant land at the figure of $700 per acre, being the sum of $500 for the land alone, plus $200 per acre for its speculative value along the road (R. 56, 57, 65).

On cross-examination the owners attempted to attack the comparability of the sales on the grounds that the lands involved were on the far side of Luke AFB, uncultivated, and that the instant land had sufficient water for agricultural purposes (R. 58-88).

Mr. Englehorn testified for the Government that comparable sales might have a little different location, but a comparison can still be made (R. 159). He used basically four comparable sales in arriving at an opinion of market value: a July 1956 sale of farmland which was located north of Luke Field, and three sales in the Adaman district. He eliminated sales made in 1955 or earlier as too remote in time (R. 160-161). When asked the degree of compara-

bility of the Adaman farmland to the subject property, the witness replied: "Well, the productivity is about the same. They have water through there. It is a pump district. They are smaller properties, not as much, but they are planted to the same type of crops. They all have about the same percentage of cotton allotment on them as the subject property. They were in vegetables, and this is a good vegetable property; and so is the one west of it. They are not as well located from the standpoint of accessibility, but you can get to them by going through Litchfield Park and going out Indian School Road" (R. 161-162). On cross-examination, the owner attempted to distinguish the comparable sales in the Adaman district because of their location on the opposite side of Luke AFB and by the commercial possibilities of the subject property (R. 170).

Mr. Cavanagh, testifying for the owners, stated that comparable sales are very much of value in determining market value, but that on the two or three occasions he had studied the vicinity he had found no comparable sales (R. 103). Several reasons were stated by the witness as to why he could find no comparable sales: "One is, first, location. Next is the size of the land. The fact they were not as close to the source that I felt needed housing, and that the terrain of the land was such that it was washy, so as comparing for comparable area or land for the subject property, I honestly could not find one. I just couldn't find one" (R. 103). In the absence of comparable sales as a guide, Mr. Cavanagh stated that one used his "experience that is gained over a period

of years, where you have either developed some other property, or have purchased other property, and had developed it, that could be developed with the same method that this particular piece of property could be developed" (R. 111).

On cross-examination Mr. Cavanagh admitted that comparable sales were the best evidence of market value, but reiterated that he had found none in the vicinity (R. 114). He eliminated the Adaman farm sales as comparable because, although in some instances only a mile away, they were on the far side of Luke away from the population centers, and because the instant land is on an arterial road between Luke and Phoenix (R. 115-116).

Mr. Robert Blake, testifying for the owners, stated that he had made an exhaustive search for comparable sales, but had found none (R. 123). The instant property, he said, was desirable because of its location on the main route between Luke and Phoenix, handy to Luke but away from the noise area, and on the side of the base toward development. The terrain was good, level land in cultivation (R. 124). The sales he found in the area were discounted because, "They were different kind of land, located in a different relative position, a different type of terrain, not cultivated, various things. Something made every one of them, every piece of land that I found in the possibly 10-mile radius—I don't think I went that far, say, 10 miles diameter, 5-mile radius—every one of them had some element that would not measure up to this land. * * * They were all different kind of land. There were some sales during that

period, but they were all different kinds of land" (R. 125). He further stated that since he found no comparable sales in the immediate vicinity, he examined other areas "on the fringe of development" to find an indication of values of lands ready for development (R. 126-127). On cross-examination, the witness stated that the Adaman sales were "comparable in no way at all" (R. 132). He said, also, that comparable sales were truly correct guides to market value, and went on to state that, "The fact that your properties are not exactly comparable is probably true in most cases. However, using the comparable sales method does not intend to use a resolving of differences method." Therefore, he explained that a consideration of the Adaman sales would have been resolving differences, rather than drawing comparisons, and were excluded for that reason (R. 132-133). On redirect he stated further that, "You must find lands that in virtually every test, in nearly every measure is comparable" (R. 134). Then on recross he stated that the similar lands he used as a guide were six or seven miles away from the instant land. "That is the one difference. The other factors are all quite similar, and I think these are similar enough to use these lands as a guide" (R. 135).

In view of these conflicts, the Government requested certain instructions clarifying these particular issues for the jury and for their guidance in reaching a verdict as to fair market value in accordance with applicable principles of law. The court refused the Government's request to instruct the jury as to

the evidentiary value of comparable sales that (R. 20-21):

> Comparable sales, at arms length, in the open market of real property, often referred to as similar sales, that occurred before the date of taking, are the best evidence of market value.

The court further refused to give the instruction requested by the Government that the jury should remove from their consideration of market value the fact that the Government was presently making use of the land for housing purposes at the time they viewed the property (R. 24). The instruction as requested reads:

> With regard to the view that you took of Tract H-801, Friday afternoon, you are directed to remove from your consideration of Market Value the fact that the Government is presently making use of the condemned tract of land. You are to valuate the farm in the condition that it was in on March 11, 1957. The testimony of the Government's and Defendants' witnesses will be helpful to you in recreating the condition of said tract at that time.
>
> You are further instructed that the Defendants are not entitled to compensation for loss of any future gain they might have hoped to realize from the tract over and above its fair market value. This is true also with respect to the Government. *You are not to consider any personal loss or gain to either party. Market value of the property on the date of taking is the only problem under consideration.*

Only the italicized portion was given (R. 185).

The jury found that the fair market value of the land taken was $165,500 ($1,250 per acre) (R. 25). The jury apparently found no severance damages to the land remaining. The Government's motion for new trial (R. 25-26) was denied (R. 27) and final judgment was entered on January 2, 1959 (R. 27-31). A notice of appeal therefrom was filed on February 10, 1959 (R. 32).

SUMMARY OF ARGUMENT

I

In the instant proceeding the Government's expert appraisers arrived at their estimates of fair market value using as a starting point for their opinions what comparable land had changed hands for on the open market. The courts have uniformly held comparable sales to be the "best evidence of market value," and "a sound rule of law as well as of common sense." This is necessarily so since the object is to determine what the property would have sold for between the willing buyer and the willing seller. The owners' witnesses, on the other hand, relied primarily on their personal experience and familiarity with the area. In the absence of comparable sales market value has been characterized by the Supreme Court as being "at best, a guess by informed persons." There is no question that comparable sales are the best evidence of market value. We submit, that the court was clearly in error in refusing to guide the jury to apply a correct standard of value by so instructing them.

II

The wide disparity between the testimony on behalf of each party is explained for the most part by the difference in views as to the land's highest and best use. It became an issue of crucial importance for the former owners to establish that the land was best adapted for the more valuable housing and commercial uses. To this end it was necessary to show that a probable demand existed for those uses. One of the foremost principles of just compensation is that evidence of such demand is limited to the needs and necessities which can be met by private business. A purely governmental project cannot be used to show demand, because it would not be a factor of consideration entering into market value between the proverbial willing buyer and willing seller. Thus, in the instant case, the effect of the housing project as evidence of the demand for housing should have been eliminated from the minds of the jurors, because it was not representative of demand which could be met by the private investor. The project came into existence only because private investment in housing for Luke AFB personnel had not been forthcoming. The jury at its view would obviously be impressed by the housing project which was then being constructed on the land. Accordingly, it was clear error for the court to have refused the Government's instruction to the effect that the use to which the Government placed the land after the taking should not have been considered in their determination of market value.

ARGUMENT

I

The Court Erred In Refusing To Instruct The Jury That Comparable Sales Are The Best Evidence Of Market Value

The object in this proceeding, as in any condemnation proceeding, was the determination of the fair market value of the land taken by the Government, in other words, what the property would have sold for on the open market between a willing buyer and a willing seller. *United States* v. *Miller*, 317 U.S. 369, 374-375 (1943). The first step taken by any reasonable man purchasing property is to apprise himself of what other property is selling for in the same neighborhood. A sound basis is thus formed upon which to ascertain relative land values. A valuation where available sales of physically comparable land are ignored is a departure from the standard of actual sale value.

In the instant case, the land involved was farmland. The Government's experts, therefore, used recent sales of other farmland which were physically comparable in proximity to the subject farm and not remote in point of time. A basis was thus established for determining the relative market values of land in the area having reasonably the same physical characteristics. To this basis was added an increment of value for the possibility of commercial development. On the other hand, the owners' witnesses rejected out of hand all of the comparable sales, and formed their opinions almost entirely from their personal experience and familiarity with the area. As

this Court has said "Opinion evidence is only as good as the facts upon which it is based." *State of Washington* v. *United States*, 214 F.2d 33, 43 (C.A. 9, 1954), cert. den. 348 U.S. 862. See also *United States* v. *Honolulu Plantation Co.*, 182 F.2d 172, 178 (C.A. 9, 1950), cert. den. 340 U.S. 820; *International Paper Co.* v. *United States*, 227 F.2d 201 (C.A. 5, 1955). Actual sales are facts demonstrating the action of parties in actual payment of a sum of money as contrasted simply with expert opinion that they would have been wise to invest their money in a certain way. In this connection the admonition of Mr. Justice Holmes should be kept in mind. He said that "what the owner is entitled to is the value of the property taken, and that means what it fairly may be believed that a purchaser in fair market conditions would have given for it in fact—not what a tribunal at a later date may think a purchaser would have been wise to give * * *." *New York* v. *Sage*, 239 U.S. 57, 61 (1915).

With no instruction relating to the weight to be given to sales of comparable property as evidence of fair market value, the jurors were left with no clear guide to choose between the unreliable testimony of the owners' witnesses based on their personal experience and the Government's testimony based on actual facts—that is the prices which have actually been paid for property in the vicinity.

The courts have uniformly held that under these circumstances such an instruction should be given. Squarely in point here is *United States* v. *5139.5 Acres of Land, etc.*, 200 F.2d 659, 662 (C.A. 4, 1952),

where the court held that this precise instruction "embodied a sound rule of law as well as of common sense." Likewise, in *United States* v. *Ham*, 187 F. 2d 265, 270 (C.A. 8, 1951), when the same question was presented, the court held that the lower court was in error when "it refused to tell the jury to take into account and consider what land in the neighborhood was being sold for at the time of taking." These cases represent the application of the settled principle that "What comparable land changes hands for on the market at about the time of taking is usually the best evidence of market value available." *Baetjer* v. *United States*, 143 F.2d 391, 397 (C.A. 1, 1944), cert. den. 323 U.S. 772. The instruction requested in the instant case virtually quoted the identical language used approvingly in *Welch* v. *Tennessee Valley Authority*, 108 F.2d 95, 101 (C.A. 6, 1939), cert. den. 309 U.S. 688, holding, "Sales at arms length of similar property are the *best* evidence of market value." [Emphasis supplied.] To the same effect is this Court's opinion in *United States* v. *Honolulu Plantation Co.*, 182 F.2d 172, 176 (C.A. 9, 1950), cert. den. 340 U.S. 820. Cf. *United States* v. *Toronto Nav. Co.*, 338 U.S. 396, 402 (1949); *Kinter* v. *United States*, 156 F.2d 5 (C.A. 3, 1946); *United States* v. *13,255.53 Acres of Land, etc.*, 158 F.2d 874, 876 (C.A. 3, 1946); and *Lyons* v. *United States*, 99 F. Supp. 429, 432 (W.D. Pa., 1951).

As the court has recently emphasized in *United States* v. *Lowrie*, 246 F.2d 472, 474 (C.A. 4, 1957), evidence of sales of comparable properties is "one of the most persuasive indications of market values and

one of the most reliable checks upon expert opinion." We submit, that it is especially important that the jury be instructed as to weight of such sales in a case like the present one.

II

The Court Erred In Refusing To Instruct The Jury Not To Consider The Use Made Of The Property By The Government After The Date Of Taking

The extent to which the value of the land was affected by the probability of using it for commercial and housing development was of fundamental importance. Using no comparable sales, the owners valued the land, not in its use at the time of taking plus a factor for the probability of commercial development, as did the Government witnesses, but in a status which assumed that the probability of development had reached the level of actuality. In other words, the owners' witnesses valued the land as if it were already being used for what they asserted was its highest and best use; and, accordingly, valued the land as housing and commercial development property. This was the justification they gave for ignoring actual sales in the vicinity. Such a process is contrary to established law which requires that the land be valued in its present condition, i.e., farmland with a probability of commercial development. *United States* v. *Meadow Brook Club*, 259 F.2d 41 (C.A. 2, 1958), cert. den. 358 U.S. 921. In that case the former owners sought to have the land taken valued as industrial property. At the time of taking, however, the property was zoned residential, although proceedings to rezone as industrial were pending and

a reclassification would have been consistent with the surrounding area. The court stated the applicable rule as follows (at page 44):

> Just compensation compatible with the requirements of the Fifth Amendment is the fair market value of the condemned property just prior to the taking. *U.S. ex rel. Tennessee Valley Authority* v. *Powelson*, 319 U.S. 266; *United States* v. *Miller*, 317 U.S. 369, 374, 147 A.L.R. 55; *McCandless* v. *United States*, 298 U.S. 342. This evaluation should reflect not only the purpose for which the property has theretofore been used, but other uses which might render it more profitable. *Olson* v. *United States*, 292 U.S. 246. *It would be improper to value the property as if it were actually being used for the more valuable purpose.* But the "extent that the prospect for demand for such use affects the market value while the property is privately held" should enter into the calculation. *Olson* v. *United States, supra*, 292 U.S. 246, 255. Obviously the more profitable operation must be one allowed by law to be carried out on the premises. Thus if existing zoning restrictions preclude a more profitable use, ordinarily such use should not be considered in the evaluation. *Westchester County Park Commission* v. *United States*, 2 Cir., 143 F. 2d 688, certiorari denied 323 U.S. 726. On the other hand if there is a reasonable possibility that the zoning classification will be changed, this possibility should be considered in arriving at the proper value. [Emphasis supplied.]

The admission of evidence of demand is qualified by the condition that only the needs can be shown

which can be also met "while the property is *privately held.*" [Emphasis supplied.] It is submitted, therefore, that under the circumstances present herein, the fact that the Government had begun construction of a housing development on the land was inadmissible for the purposes of showing that the market would pay more for the farmland because of the probability of use for housing purposes; and, accordingly, it was highly prejudicial for the jury to view the project in its advanced stages of construction, without some qualification from the court to dismiss from their deliberations, the present use to which the Government was putting the land.

The very reason that the Government was taking the land for a housing project, was that private industry had refused to commit private funds for the venture. This fact was clearly recognized by witnesses for both parties, *supra*, pp. 3, 5. That private demand was nonexistent was the basic premise which compelled the Government to promote this housing project, for Wherry and Capehart housing is provided through Government financial backing only where available housing cannot fill the public need.[3]

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[3] Section 505 of the Act of September 28, 1951, 65 Stat. 336, 365, in authorizing appropriations for the instant housing project, stated that such project would be under the terms of Title VIII of the National Housing Act, 12 U.S.C. secs. 1748-1748h (Wherry Housing Act), which provides for federal mortgage insurance, "In order to assist in relieving the acute shortage and urgent need for family housing which now exists at or in areas adjacent to military installations because of the uncertainty as to the permanency of such installations * * *." Section 1748b(a).

Obviously, where private enterprise has refused to accept the financial risks attendant with projects of this type without Government backing, because of constant change in military requirements and resultant change in housing needs, the instant housing project cannot conceivably be evidence of a demand for housing which affects market value as between the willing buyer and the willing seller.

Demand which can be met only by the Government cannot be equated to the needs which might be met by the business community in determining the effect for valuation purposes of a particular use of the property. *Boom Co.* v. *Patterson*, 98 U.S. 403, 408 (1878); *United States* v. *Chandler-Dunbar Co.*, 229 U.S. 53, 76-77 (1913). In other words, demand cannot be shown by the Government's activities. Here, the private investor is as effectually precluded, for financial reasons, from meeting the only real demand present as he would be in the case where land is taken for a purely governmental project beyond the reach of the ordinary investor. *Olson* v. *United States*, 292 U.S. 246 (1934). The demand must be such that it can be met by a private investor. *Cameron Development Co.* v. *United States*, 145 F.2d 209 (C.A. 5, 1944); *United States* v. *Rayno*, 136 F.2d 376 (C.A. 1, 1943), cert. den. 320 U.S. 776. This Court took the same position in *Polson Logging Co.* v. *United States*, 160 F.2d 712, 717 (C.A. 9, 1947), when it approved an instruction given by the lower court. This Court stated that " * * * while the court properly charged the jury that they should not consider the government's need for the property, nor its

value to the government upon acquisition, they were told that nevertheless, if they found that the property has a special utility or availability value not only to the government, but to others, then such value should be considered in connection with what the jury might find a purchaser would pay for the property." See also *United States* v. *Foster*, 131 F.2d 3 (C.A. 8, 1942), cert. den. 318 U.S. 767.

When the jury viewed the property, saw the housing project on it,[4] and heard all the testimony to the effect that the land was taken for a Government housing project, they certainly could have drawn the conclusion that the Government's project was evidence of the general demand for housing among private developers. The jury should have been instructed, as required by the law and the circumstances of this case, to exclude from their determination of market value the use to which the Government was putting the property.

The refusal to give the requested instruction also violated the settled principle that the United States should not be required to pay for value it alone creates. *United States* v. *Miller*, 317 U.S. 369 (1943); *United States* v. *Cors*, 337 U.S. 325 (1949). To enhance value because of the Government's need for the land as a site for a Wherry project—which was needed because private financing was unavailable—is clearly an attempt indirectly to capitalize on

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[4] "A Juror: What is that?

"Mr. LaPrade: That is upon the land which was taken by the Government, and is a new structure put up by the Government" (R. 164).

the Government financing of the very project for which the land was taken. This violates the *Miller* and *Cors* rule of fairness.

CONCLUSION

For the foregoing reasons, it is submitted that the judgment below must be reversed with directions for a new trial to ascertain just compensation according to the correct legal principles.

Respectfully,

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